JOINT APPLICATION OF

J.W. HOLDINGS, INC.

and **CASE NO. PUE-2002-00235**

MARINERS LANDING WATER & SEWER COMPANY, INC.

For authority to acquire and dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of certificates of public convenience and necessity pursuant to Va. Code §§ 56-265.2 and 56-265.3

REPORT OF MICHAEL D. THOMAS, HEARING EXAMINER

January 8, 2003

HISTORY OF THE CASE

On April 16, 2002, J.W. Holdings, Inc. ("J.W. Holdings") and Mariners Landing Water & Sewer Company, Inc. (the "Company") (collectively, the "Joint Applicants") filed an Application seeking authority for J.W. Holdings to dispose of, and the Company to acquire, certain utility assets, and a certificate of public convenience and necessity ("CPCN") for the Company to own and operate the utility assets.

On May 6, 2002, the Joint Applicants filed a Motion for Expedited Hearing. In support of the Motion, the Joint Applicants argued that to continue providing adequate water service to their existing and proposed new customers, the Company needed to make approximately $410,000 in capital improvements. The Company had no funds to finance the capital improvements and it had no credit history. If the Company sought loans to make the improvements, it would be required to disclose that it has a pending application for a CPCN, and the Commission had not yet approved its rates and charges. Without an expedited hearing, the Company feared its ability to obtain financing to make these improvements would be jeopardized and would impact the continued development of the subdivisions comprising the Mariners Landing community.

On May 10, 2002, the Commission entered a Preliminary Order. In that Order, the Commission found that J.W. Holdings was providing water service to more than 50 customers without having first obtained a CPCN, and was, therefore, in violation of Va. Code § 56-265.3. Pursuant to Va. Code § 56-240, the Commission declared J.W. Holdings' rates to be interim and subject to refund as of the date of the Order while the Staff investigated the reasonableness of its rates. Further, the Commission consolidated Case Nos. PUE-2002-00099 and PUE-2002-00235,

and assigned the matter to a Hearing Examiner to conduct all further proceedings, including establishing a procedural schedule for a public hearing. Finally, the Commission ordered the Staff to file a response to the Joint Applicants' Motion for Expedited Hearing.

On May 20, 2002, the Staff filed its Response to the Joint Applicants' Motion for Expedited Hearing. In its Response, the Staff stated that it would be unable to perform its review of the Application and participate in any hearing scheduled before September 2002, at the earliest. The Staff explained its role in reviewing an application such as the one filed by the Joint Applicants. The Staff was particularly concerned with its ability to audit the Company's books and records to determine whether the Company's charges are just and reasonable. The Joint Applicants advised the Staff that no separate financial information for the water system existed. The Staff advised the Company to track revenues and expenses associated with the system for the period January 1, 2002 through June 30, 2002, and submit a balance sheet and income statement for the six months ending June 30, 2002. With this information, the Staff could then schedule its audit of the Company's records, and prepare its report to the Commission and its testimony for this proceeding.

Pursuant to Hearing Examiner's Ruling dated June 19, 2002, the Joint Applicants' Motion for Expedited Hearing was denied and this matter was set for hearing on September 19, 2002. A procedural schedule was established for the filing of prefiled testimony and exhibits and for the publication of public notice.

On August 27, 2002, the Staff filed a Motion for Extension of Procedural Schedule in which the Staff stated the employee responsible for conducting the audit of the Joint Applicants' financial records had health issues that precluded him from completing the audit until mid-September 2002. The Joint Applicants had no objection to the modification of the procedural schedule.

By Hearing Examiner's Ruling entered on August 28, 2002, the Staff's Motion for Extension of Procedural Schedule was granted. The evidentiary hearing was rescheduled for November 14, 2002, and the procedural schedule for the filing of the Staff's direct testimony and the Joint Applicants' rebuttal testimony was modified. The Joint Applicants were required to notify the Company's customers of the change in the hearing date by billing inserts.

On November 14, 2002, the evidentiary hearing was convened as scheduled. The Joint Applicants appeared by their counsel Wilburn C. Dibling, Jr., Esquire; and the Staff appeared by its counsel, Kara Austin Hart, Esquire. Two public witnesses appeared at the hearing. A copy of the transcript is being filed with this Report.

Counsel for the parties presented a Stipulation Agreement ("Stipulation") for the Commission's consideration. The Stipulation resolves all the contested issues between the Joint Applicants and the Staff. Under the Stipulation Agreement, the prefiled direct and rebuttal testimony of the Joint Applicants and the prefiled direct testimony of the Staff were admitted into the record without cross-examination. The Stipulation Agreement further provides that: (1) the Joint Applicants accept Mr. Armistead's accounting recommendations on page 11 of his prefiled testimony, and Mr. Tufaro's recommendations on pages 12-13 of his prefiled testimony, with the exception of Mr. Tufaro's first recommendation; (2) the Staff and the Joint Applicants agree the $30 monthly charge for water service, which is set forth in the Rate Schedule of the Company's

proposed Tariff, should be increased to $33 per month; (3) the Joint Applicants and the Staff agree to the Total Net Utility Plant figure of $99,865 in Mr. Armistead's prefiled direct testimony (Statement II, Column 3), and further agree this figure will be used as the Company's loan balance as of June 30, 2002, upon which interest will be calculated; (4) the Joint Applicants and the Staff agree the issue of the management fee claimed by the president of Mariners Landing Water and Sewer Company, Inc. will be deferred to a subsequent rate proceeding; and (5) the Company agrees to refund amounts collected during the interim rate period in excess of the final rates approved in this proceeding. (Ex. 1).

SUMMARY OF THE RECORD

Public Witnesses

Mr. Larry Sedell, vice president of Mariners Village Condominium Association (the "Condominium Association"), is opposed to the Company's proposed 100% rate increase. Mr. Sedell explained that at present there are 48 units in the Condominium Association and there are 16 water meters. Three units, one above the other, are metered together. Each unit is allocated 1,000 gallons per month usage and usage above 3,000 gallons per month is allocated among the three units. Of the 48 units, only eight units are occupied year round, and individuals on fixed incomes occupy five of these units. Mr. Sedell believes under the current metering scheme those on fixed incomes are paying for water they are not using, or for water that other units are using. (Tr. at 11-12).

Mr. Sedell further explained that of the 48 units, 23 units are rented out during the period June through September by the day or the week. J.W. Holdings owns 10 of the 23 units that are rented. When there is a turnover in occupancy in one of the rental units, the rental management company launders all the sheets and towels in one of the units owned by J.W. Holdings. This results in laundry being done for hours, multiple days of the week, to keep up with demand for clean linens for the rental units. Mr. Sedell believes that during the months of July and August this usage caused water bills for him and his neighbor to exceed the 1,000-gallon allocation. In effect, he and his neighbor subsidized the operations of the rental management company. (Tr. at 12-13).

Mr. Sedell asked the Commission to look out for the interests of the Condominium Association. By the summer of 2003, there will be 72 units in the Association. The majority of these units will be summer homes, but their residents will pay for water 12 months of the year. Mr. Sedell recommended the unit owners should not be billed for excessive usage when a stack of three units exceeds its allocation, but rather only when the entire building exceeds its allocation. (Tr. at 13-14).

Mr. Norman Mattson, vice president and treasurer and a member of the Board of Directors of the Monoacan Shore Homeowners Association (the "Homeowners Association") brought the initial complaint with the Commission. By way of background, Mr. Mattson explained that the Homeowners Association is a group of 27 town homes located in seven buildings within the Monoacan Shore section of Mariners Landing. All the buildings, except one, were built prior to 1992 when the current developer acquired the property. Prior to the acquisition, the development

had a water system in place to serve the town homes and several single-family residences. The Association operates and maintains its own community septic system. From the time the developer acquired the property in the early 1990's until January 1, 2002, water customers were billed a $15 flat rate, and there was no perceived need to increase rates. Mr. Mattson believes the developer's plans to expand the development prompted the proposed increase of more than 100% in water rates. (Tr. at 15-17).

Mr. Mattson opposes the $1,000 per month management fee proposed for the president of the Company. This fee on an annual basis represents almost as much as the $14,133 annual payroll for all the other employees who provide services to the water company. Mr. Mattson believes the management fee is excessive and should not be passed on to the water company's customers. (Tr. at 19-20).

Mr. Mattson also opposes rolling the 10% administrative fee into the Company's rates and changing the monthly minimum charge from $30 to $33. He believes this is a matter of semantics, and still results in a rate increase for the Company's customers. However, he agrees that the impact of the increase is lessened slightly since the 10% administrative fee would have been applied to overage charges. (Tr. at 21).

Mr. Mattson cannot understand how $335,000 was apparently loaned to the Company to acquire utility assets and there is still a need to transfer by license agreement the utility assets from J.W. Holdings to the Company. If the money was loaned, the Company should already own the assets, would be entitled to claim an interest expense, and there would be no need for the license agreement. Mr. Mattson expressed his concern that there was no balance sheet where the Company's assets and liabilities could be verified, particularly the actual total capital cost of the water system. Mr. Mattson also disputes the $134,496 allocated from the purchase price of all the property to the water system. He does not believe sufficient support has been provided to support the amount of the allocation. (Tr. at 22-24).

Mr. Mattson noted that most of the additional costs incurred by the Company were for system expansion to the new areas being developed in the community. He believes these costs should have been passed on to the new customers and should not have been allocated to existing customers. The Company should have collected the cost to extend service to these new customers in the form of a connection fee. Existing customers should not be placed in a position of supporting a system expansion that benefits only the developer of the community. (Tr. at 24-25).

Mr. Mattson expressed his concern with the 1½% per month late payment fee. He explained that many of the Company's customers disputed the rate increase and have not paid the increased rates waiting for the Commission decision on the Company's request. If the late payment fee is applied retroactively, he believes this may have a significant financial impact on some customers. Mr. Mattson recommended that the Commission permit the late payment fee to be applied prospectively. (Tr. at 25-26).

Mr. Mattson disagrees with the requirement for a customer deposit. Based on the Company's own records, there have been very few instances where individuals were delinquent with their payments. He sees no reason for the Company to require a deposit of two months'

expected usage and earn interest on other people's money. With other utilities, if a person establishes a payment history, the deposit is generally waived. (Tr. at 26-27).

Mr. Mattson also disagrees with the amount shown on the Company's books for repair and maintenance. Of the $7,932 shown on the Company's books, $6,628 was incurred during the period June 28, 2002 through August 31, 2002. Mr. Mattson questions whether these expenses were properly booked as repair and maintenance expenses or whether they should have been capitalized as capital improvements. He is not sure that the Staff adequately reviewed the invoices to ensure that they are legitimate repair and maintenance expenses. (Tr. at 27-29).

Mr. Mattson also takes issue with the $350 per month shown as a rental expense. The Company has four part-time employees who provide services to the Company. The water customers are already paying their salary expense. Given the limited amount of time they are actually working for the Company, Mr. Mattson believes a $350 per month rental expense is excessive. (Tr. at 29).

Finally, Mr. Mattson addressed what he believes is an inequity in the way the Company reads its water meters. In June 2002, based on a 26-day billing period, Mr. Mattson was under his allocation. In July 2002, based on a 35-day billing period, Mr. Mattson exceeded his allocation and was expected to pay an overage charge. He believes the Company should be required to bill on a 30-day cycle if it is going to have a monthly minimum charge. (Tr. at 29-30).

On cross-examination, Mr. Mattson stated he was not aware that the Company had dropped its request for an administrative fee. He also stated that, while he has never paid a connection fee, he would not be opposed to the Company collecting its actual costs for providing a connection. He also stated he was aware that the Company's rates were made interim on May 10, 2002, but that he and a number of other customers did not trust that any increased rates paid would actually end up with the water company, rather than the development company. Mr. Mattson believes the Company should be entitled to a fair rate of return, but he was unwilling to state what that rate should be. (Tr. at 31-39).

Joint Applicants

The Joint Applicants presented the testimony of three witnesses: David E. Tarr, certified public accountant and the accountant for J.W. Holdings; John A. White, president of J.W. Holdings and the Company; and Jeffrey C. Burdett, development planner for J.W. Holdings and M & J Developers, LLC.

Mr. Tarr testified the Company's current water rates were placed into effect on January 1, 2002, and had been previously unchanged since 1992. The accounting records for the Company were also segregated from J.W. Holdings effective January 1, 2002. Since then, the records have been maintained on an accrual basis consistent with the Uniform System of Accounts for Class C Water Utilities. (Ex. 2, at 2).

Prior to January 1, 2002, J.W. Holdings' income from water operations was accounted for separately, but expenses were not. Mr. Tarr attempted to segregate the financial records for the

water operations for calendar year 2001. He prepared an income statement and a balance sheet for water operations for the year ended December 31, 2001. For the year, the water system had a net loss of $37,924.65. This did not include amortization, management fees, professional fees, rent expense, and contributions in aid of construction. Mr. Tarr calculated the Company's test year total annualized revenue to be $39,371.56. In his opinion, for the Company to break even, its revenue requirement would need to be $93,344.85. This includes no compensation to the owners of the system for their capital and property invested or their time and other resources expended in the operation of the system. He considers six percent a fair rate of return for the owners in today's economy. (Ex. 2, at 3-6).

Mr. White described himself as an entrepreneur involved in a number of different business ventures. Over the last four years, he has been actively involved in real estate development. His testimony provided an overview of J.W. Holdings' involvement with the water system, the disposition and acquisition of the water system, and the ability of the Company to provide safe and reliable water service at just and reasonable rates. (Ex. 3, at 1-2).

J.W. Holdings owns all 100 shares of stock of the Company. A predecessor company to J.W. Holdings acquired the water system in connection with the acquisition of a large amount of acreage through a bankruptcy proceeding in 1992. J.W. Holdings, and its predecessor, have operated the water system and provided water service to the Mariners Landing community on Smith Mountain Lake in Bedford County, Virginia, since 1992. (Ex. 3, at 2).

Mr. White first contacted the Staff in 2000 regarding registration requirements for the water system. He was advised that if the system planned to serve more than 50 connections, it would have to obtain a CPCN. At the time, Mr. White did not believe the water system had reached the threshold that would require a CPCN. He next heard from the Staff in January 2002, when he was advised that the water utility should apply for a CPCN by March 15, 2002. Mr. White obtained legal counsel to assist in the necessary filings and in March 2002, the Company was incorporated to operate the water utility. The Company's articles of incorporation permit it to engage in a sewer business, but it is not seeking such authority in this proceeding. (Ex. 3, at 3-4).

J.W. Holdings proposes to transfer by a 25-year license agreement to the Company, all the water utility assets, including all real property, easements, and other personal property. For consideration of $100, the Company will have the exclusive and sole right to occupy and use the water utility assets to provide water service to the residents of the Mariners Landing community. The Company is required to operate the water system in compliance with all applicable federal, state, and local laws and ordinances. The Company is also required to keep the utility assets in good order and condition, and perform such repairs or reconstruction as required to maintain the system in good working order. (Ex. 3, at 4-5).

The property to be transferred includes: two well lots; a third lot on which there is a well and storage tank; required easements for water lines; three active Class IIB wells; six recently drilled wells that are undergoing required testing and have not been placed in service; well houses and appurtenances; one 2,500-gallon hydropneumatic tank and all appurtenances; a 12' x 15' pump house with chemical treatment facilities and chemicals; approximately 2.5 miles of distribution lines

and all appurtenances; and any and all other utility assets. The transfer of the utility assets will not impact any rates, charges, or fees currently in effect. (Ex. 3, at 5-6).

Mr. White foresees no problem in the Company meeting growing demand and providing safe and reliable water service in the future. (Ex. 3, at 6).

On rebuttal, Mr. White supported the Company's proposed $1,000 per month management fee. He believes the management expertise he brings to the Company and the time he spends on Company matters warrant the fee. He believes he should receive fair and reasonable compensation for the time he expends on Company matters. (Ex. 8, at 1-2).

Mr. White further testified the Company needs the revenue generated by the 10% administrative fee. He believes the Company's rate of return of 1.49% is so small that its viability is at issue. As an alternative, Mr. White proposed that the $3 per month that would have been generated by application of the administrative fee on the $30 minimum monthly charge be reallocated to the monthly charge. This would increase the minimum monthly charge to $33. Overall, this would reduce slightly the Company's overall revenue, but it provides an additional margin of safety for its operations. (Ex. 8, at 2-3).

In order to support the Company's proposed interest expense, Mr. White provided a copy of a note between J.W. Holdings and the Company capitalizing the water utility. Although there had previously been no note documenting the loan between the two companies, the amount of $335,715.86 had been recorded on J.W. Holdings' books. The note will mature on June 30, 2017, and carries an interest rate of prime plus one with a 10% cap. (Ex. 8, at 3).

Finally, Mr. White stated the Company does not now provide sewer service, but at some point in the future it may want to do so. At the appropriate time, the Company will seek a CPCN from the Commission to provide sewer service. (Ex. 8, at 4).

Mr. Burdett testified he would be the operator of the water system and would be responsible for planning any infrastructure improvements to the system. He is in the process of obtaining the necessary Class 6 Licensed Operator certification. The water system is operated pursuant to Virginia Department of Health ("VDH") Water Works Operation Permit No. 5019175 with an effective date of November 26, 1997. The system is currently authorized to serve 130 equivalent residential connections ("ERCs"). Since the VDH permit was issued, improvements to the system have increased its capacity to 158 ERCs. Once six new wells go on line, the system's capacity will increase to 612 ERCs. The water system is in good condition and after transfer will be operated by the same personnel currently operating the system. The water system is in good standing with the VDH; all monthly water samples have been submitted and the system has had no unsatisfactory water sample tests in the last five years. (Ex. 4, at 2-4).

The system currently serves 105 customers; over the next two years an additional 120 new residential units and two commercial projects will be constructed in its service territory. The Company has a six-phased $655,000 capital improvement program to address existing and future demands on the water system. (Ex. 4, at 4-5).

Mr. Burdett believes the Company will provide safe and reliable water service to its customers. (Ex. 4, at 7).

Staff

The Staff presented the testimony of three witnesses: Ashley W. Armistead, Jr., principal public utility accountant with the Division of Public Utility Accounting; Robert C. Dalton, manager of regulatory analysis with the Division of Public Utility Accounting; and Mark A. Tufaro, utilities analyst with the Division of Energy Regulation.

Mr. Armistead audited the books and records of the Company. The scope of the audit included an analysis of revenues, expenses, taxes, and balance sheet accounts. As of June 30, 2002, the Company served 105 metered residential water connections and 81 availability customers. The right to charge an availability fee is supported by deed restriction. The Company's current rates and charges were effective on January 1, 2002, and pursuant to the Commission's Preliminary Order are interim and subject to refund. The Company receives services from two sister companies, TPS Management ("TPS") and M & J Developers, LLC ("M&J"). (Ex. 5, at 1-3).

Mr. Armistead made the following adjustments to the Company's books:

(1) annualized revenues based on 105 metered residential customers and 81 availability customers, using the consumption block recommended by Staff witness Tufaro, which increased the test period revenues by $30,715;
(2) annualized a full year of electric expense, which increased expenses by $880;
(3) increased cost of service to include an entire year's office expenses, which increased Operations and Maintenance ("O&M") expense by $443;
(4) allowed the full amount of the insurance premiums related to the water system, which increased O&M expense by $345;
(5) annualized a reasonable rent expense of $350 for the four employees responsible for the water system's operation and billing, which increased rent expense by $2,100;
(6) annualized the cost for water treatment chemicals, which increased O&M expense by $103;
(7) annualized the cost of water test kits, which increased supplies expense by $41;
(8) annualized contract services provided by TPS for accounting services and M&J for operational services, which increased O&M expense by $6,143;
(9) annualized water system repair and maintenance expenses, which increased O&M expense by $7,932;
(10) amortized rate case expense over three years, which increased O&M expense by $4,956;
(11) eliminated the $6,000 management fee for Mr. White due to lack of supporting data;
(12) allowed a 3% composite rate on test year-ended depreciable plant balances, which increased depreciation expense by $1,252;

(13) computed an annual amortization expense of $7,759 that the Company should start to book against Contributions in Aid of Construction ("CIAC") balance;
(14) eliminated the $50 amortization of organizational cost;
(15) increased Taxes Other than Income Taxes by $1,109 since the Company had not booked any gross receipts or special taxes;
(16) allowed an amount for the operator's waterworks license and annual waterworks operation fee, which totaled $279;
(17) did not include any federal income taxes since the Company is a Subchapter "S" corporation and it pays no federal income tax;
(18) included utility related plant costs that could be verified by invoice in utility plant in service, which increased utility plant in service by $37,977;
(19) increased CIAC for connection fees and contributed property not properly booked, which increased CIAC by $258,623;
(20) increased accumulated depreciation at a 3% composite rate to $22,853; and
(21) allowed accumulated amortization of CIAC in the amount of $9,948 as of June 30, 2002.

(Ex. 5, at 3-10).

Mr. Armistead also disallowed interest expense on a long-term note and a loan from a stockholder carried on the Company's books. He requested copies of these documents to determine the terms and the purpose of the borrowings, but was told they did not exist. (Ex. 5, at 10).

Mr. Armistead recommended that the Commission require the Company to:

(1) apply a 3% composite rate to all depreciable plant balances and to CIAC;
(2) maintain all invoices in the utility company's file that pertain to both expense and capital disbursements;
(3) maintain property records on capitalized plant items;
(4) restate plant, accumulated depreciation, CIAC, and accumulated amortization of CIAC as of June 30, 2002, to levels reflected in Mr. Armistead's Column (3) of Statement II;
(5) maintain records to enable an analysis of the costs between water and sewer, if and when the sewer system has been completed and is in service;
(6) book connection fees properly to Account 271 (CIAC);
(7) maintain support logs for all employee costs and other expenses allocated to the Company;
(8) require the Company to file an Annual Financial and Operating Report with the Division of Public Utility Accounting; and
(9) write-off the unsupported loans.

(Ex. 5, at 11).

Mr. Armistead's adjustments produce revenues of $50,401, which result in an adjusted operating income, after adjusted expenses, of $1,558. Mr. Armistead calculated a rate base of $104,294 and a return on rate base of 1.49%. (Ex. 5, at 11.)

Mr. Dalton's testimony covered the Joint Application and its compliance with the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia. The Joint Applicants propose to transfer by a 25-year license agreement all of the water utility assets of J.W. Holdings to the Company. Under the Utility Transfers Act, the Commission must be "satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition." Mr. Dalton found that this standard has been met. The Company is acquiring all the water utility assets used to provide water service to existing customers, the same personnel will be responsible for operating and maintaining the system, and the transfer of assets will not adversely impact the customers' rates. Mr. Dalton recommended that the Commission approve the transfer of utility assets by license agreement. (Ex. 6, at 1-7).

Mr. Tufaro's testimony covered the Company's proposed rates, rules, regulations, and quality of service. He found that the Company would be able to provide adequate water service. The Company's facilities are in good condition, and it is in good standing with the VDH. (Ex. 7, at 2-4).

Mr. Tufaro disagreed with the Company's proposed $30 minimum monthly charge, minimum monthly allowance, and 10% administrative fee. His primary concern was with the minimum monthly allowance and the 10% administrative fee. Mr. Tufaro believes the Company's minimum monthly allocation of 3,000 gallons for a customer residing in a condominium and 4,000 gallons for a customer residing in a single-family home may be discriminatory. In lieu thereof, he proposed a 3,900 minimum monthly allowance, which he calculated to be revenue neutral. Mr. Tufaro could find no support for the 10% administrative fee the Company proposed to place on a customer's minimum charge and usage fee. He knew of no other water or sewer company in Virginia that had an approved administrative fee. (Ex. 7, at 4-6).

Mr. Tufaro found the Company's proposed $10 availability fee was supported by the appropriate deed restrictions. Specifically, the "First Amendment to Restriction, Covenants and Conditions of Mariners Landing Sections 1 and 2 Property Owners Association" and disclosure packages provided to buyers place them on notice that there is an availability fee. (Ex. 7, at 6-7).

Mr. Tufaro agreed with the Company's proposed $1,800 service connection fee for a single-family home. However, he disagreed with the Company's other connection charges, which mirror the Bedford County Public Service Authority's charges. He found these charges were not cost based. Mr. Tufaro recommended the Company change its tariff to reflect that connection charges for dwellings other than single-family homes would be at actual cost. (Ex. 7, at 8-9).

Mr. Tufaro agreed with the Company's proposed $35 meter test fee; customer deposit; late payment fee of 1½ % per month on past due balances; $25 bad check charge; $50 turn-on charge to restore water service disconnected for a violation of the Company's rules and regulations of service; and $50 charge to discontinue service at the owner's request. (Ex. 7, at 9-12).

Mr. Tufaro recommended that the Commission grant the Company a CPCN. In addition, he recommended:

(1) a minimum monthly charge of $30 when the customer does not exceed a monthly allowance of 3,900 gallons and a $3.50 per 1,000 gallon usage in excess of the monthly allowance;
(2) denial of the Company's proposed administrative fee of ten percent of the total minimum charge and usage fee;
(3) an availability fee of $10 per month for residential lots which do not receive water service, but the service runs adjacent to, or in front of, the customer's property and is available upon request;
(4) an $1,800 connection charge for a single-family dwelling;
(5) for connections other than a single-family dwelling, the connection charge should be the actual cost to the Company to complete the connection;
(6) a $35 meter test fee if a meter test has been conducted within the past 24 months, and the customer still desires the test;
(7) a customer deposit equal to the customer's estimated liability for two months' usage;
(8) a late payment charge of 1½% per month on all past due balances;
(9) a $25 bad check charge;
(10) a $50 turn-on charge to restore water service that has been disconnected for non-payment of a water bill or a violation of the Company's rules and regulations of service;
(11) a $50 charge when service is discontinued at the request of the customer; and
(12) a CPCN be awarded to the Company authorizing it to provide water service to the Mariners Landing Community on Smith Mountain Lake in Bedford County, Virginia.

(Ex. 7, at 12-13).

At the hearing, Mr. Tufaro clarified his testimony that there was discrimination within the residential customer class. The condominium owners have a monthly allocation of 3,000 gallons; the single-family homeowners have a 4,000 gallon monthly allocation. Mr. Tufaro examined the usage patterns for both groups and the revenue amounts, and developed a 3,900-gallon monthly allocation that was revenue neutral. (Tr. at 54-55).

Mr. Tufaro also addressed Mr. Sedell's complaint concerning water usage. The Company's existing tariff provides that each condominium unit should be receiving a 3,000-gallon monthly allocation, not the 1,000-gallon per unit, 3,000-gallons per stack, allocation testified to by Mr. Sedell. According to the Company's tariff, in a building with four or less dwelling units each unit would be metered separately. In a multi-family building, more than four dwelling units served by one meter, the monthly allowance and usage fees are shared equally by all units. Mr. Tufaro was under the impression that there was one meter for each 12-unit condominium building, or four meters total for the 48-unit complex. Until the hearing, he was unaware that each 3-unit stack had

its own water meter. Mr. Tufaro agreed to investigate further Mr. Sedell's complaint and would examine Mr. Sedell's water bills to determine what usage he was actually billed. (Tr. at 56-61).

DISCUSSION

The Commission must decide four issues in this case: (1) whether to approve the transfer by License Agreement of the water utility assets from J.W. Holdings to the Company; (2) whether to issue the Company a certificate of public convenience and necessity to operate a water utility; (3) whether the rates, fees, and terms of service proposed by the Company are reasonable; (4) whether to adopt the Stipulation agreed to by Joint Applicants and the Staff.

The Staff reviewed the License Agreement that will transfer all of the utility assets currently held by J.W. Holdings to the Company. The Staff is "satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition." Staff witness Dalton recommended that the transfer by License Agreement be approved under the terms of the Agreement. I find the License Agreement meets the statutory requirements found in the Utility Transfers Act and should be approved by the Commission. I further find, consistent with Mr. Dalton's recommendation, that the Company should file a report of action with the Commission within 30 days of the actual transfer, notifying the Commission that the transfer has taken place and the date thereof.

The Commission has already found that the water utility has been operating in violation of the Code of Virginia. The issuance of a certificate of public convenience and necessity will bring that water utility under the full regulatory jurisdiction of the Commission, including the ability of the Staff to investigate customer complaints. I find the public interest would best be served if the Commission issued the Company a certificate of public convenience and necessity.

The issue of rates, fees, and terms of service proved to be the most contentious in the case. The proposed rate increase of over 100% was the impetus for the water customers to file their initial complaint with the Commission. The Stipulation entered into between the Joint Applicants and the Staff reasonably protects the interests of the Company's water customers. Although the final minimum usage rate of $33 per month may not be to everyone's liking, this case will ensure that on a going-forward basis there will be no subsidization between the water utility and the development company, and there will be no subsidization between customers in the same customer class. Further, the case established the Company's rate base for ratemaking purposes. The Company must maintain accurate books and records to justify any further rate increases. The minimum usage rate of $33 produces a rate of return on rate base, after the adjustments agreed to in the Stipulation, of 5.04%, which for a small water company is well below the average for such companies. I find the rates, fees, and terms of service resulting from the Stipulation are reasonable. I further find the Stipulation reasonably addresses the concerns the Company's customers raised in this proceeding and should be adopted by the Commission.

Regarding Mr. Sedell's complaint concerning the management company's laundry practices, this matter should be taken up with the Condominium Association. It is not a water utility issue. The easiest fix would be to restrict the management company's laundering of sheets and towels to

units where the other two units in the stack are also rental units. The Staff should continue to investigate whether each condominium unit is being billed for the correct monthly minimum allocation in accordance with the Company's tariff. Mr. Sedell testified that each unit in the stack was allocated 1,000 gallons per month for a total of 3,000 gallons for the entire stack. Mr. Tufaro testified that each unit in the stack should have been allocated 3,000 gallons per month for a total of 9,000 gallons for the entire stack. This discrepancy may account for the overage charges incurred by some condominium owners. The change in the monthly minimum usage for condominium customers from 3,000 gallons per month to 3,900 gallons per month may reduce the likelihood that a full-time resident would incur an overage charge.

FINDINGS AND RECOMMENDATIONS

Based on the evidence received in this case, and for the reasons set forth above I find that:

(1) Adequate service to the public at just and reasonable rates will not be impaired or jeopardized by the transfer of water utility assets from J. W. Holdings, Inc. to Mariners Landing Water & Sewer Company, Inc.;

(2) Pursuant to the Utility Transfers Act, the Commission should approve the transfer of water utility assets from J. W. Holdings, Inc. to Mariners Landing Water & Sewer Company, Inc.;

(3) Pursuant to § 56-265.2 of the Code of Virginia, the Commission should issue Mariners Landing Water & Sewer Company, Inc. a certificate of public convenience and necessity to acquire the water utility facilities from J. W. Holdings, Inc.;

(4) The Commission should require the Joint Applicants to file a report with the Commission's Director of Public Utility Accounting within 30 days of the transfer of utility assets from J. W. Holdings, Inc. to Mariners Landing Water & Sewer Company, Inc. notifying the Commission that such transfer has taken place;

(5) The rates, fees, and terms of service resulting from the Stipulation are reasonable;

(6) The Commission should adopt the Stipulation agreed to by the Joint Applicants and the Staff; and

(7) The Commission should require Mariners Landing Water & Sewer Company, Inc. to implement the Staff's recommendations agreed to in the Stipulation.

I therefore ***RECOMMEND*** the Commission enter an order that:

(1) ***ADOPTS*** the findings contained in this Report;

(2) ***APPROVES*** the transfer of utility assets from J.W. Holdings, Inc. to Mariners Landing Water & Sewer Company, Inc. pursuant to the terms of the License Agreement between the two companies;

(3) ***GRANTS*** Mariners Landing Water & Sewer Company, Inc. a certificate of public convenience and necessity to operate a water utility in the service territory it has requested; and

(4) ***PASSES*** the papers herein to the file for ended causes.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 C) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

_____

Michael D. Thomas
Hearing Examiner